

ENERGY RESERVE, INC.

IBLA 77-104

Decided April 4, 1977

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 22768.

Affirmed.

1. Oil and Gas Leases: Reinstatement! ! Reinstatement: Generally

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays. A lessee whose payment is mailed more than 16 days after the due date is not reasonably diligent.

2. Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Termination

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

APPEARANCES: Roger Sherer, Secretary! Treasurer, Energy Reserve, Inc.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Energy Reserve, Inc., has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated December 10, 1976, denying its petition for reinstatement of oil and gas lease M 22768. The lease had terminated by operation of law for failure to pay the annual rental on or before its anniversary date, November 1, 1976. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

Appellant's check for the lease rental was mailed on November 17, and received by the BLM on November 19, 1976. Notified that its lease had terminated for failure to timely pay rental, appellant, on December 7, 1976, filed a petition for reinstatement. The BLM denied the petition on the ground that the tardy payment was due to lack of reasonable diligence and was not justifiable.

In its statement of reasons, appellant asserts that the denial of reinstatement is unjust and in violation of the Constitution. Appellant also alleges that payment was tardy because it relied on the customary BLM courtesy notices but received no such reminder in this instance.

[1] When payment of the annual rental for an oil and gas lease is not timely made, such lease terminates automatically by operation of 30 U.S.C. § 188(b) (1970), not by act or decision of any employee of the Department of the Interior. The law permits reinstatement of terminated leases if the lessee can establish that his failure to pay timely was either justifiable or not due to a lack of reasonable diligence on his part. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of payment. 43 CFR 3108.2-2. A payment mailed 16 days after the due date does not satisfy the reasonable diligence test. Lucyann W. Cameron, 29 IBLA 141 (1977); Vern H. Bolinder, 17 IBLA 9 (1974). ^{1/}

[2] Appellant's reliance on the courtesy notice cannot be deemed justification for late payment. The Department has no obligation to send a courtesy notice. Norman E. Marker, 21 IBLA 144 (1975). Reliance thereon can neither prevent the lease from termination by operation of law, nor justify the failure to pay the lease rent timely. C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975); Louis J. Patla, 10 IBLA 127 (1973). There is no basis evinced in the record which would impel the conclusion that the failure to pay rental timely was justifiable.

We find that appellant's constitutional rights were not violated by the denial of its petition for reinstatement.

^{1/} The payments in Cameron and Bolinder were 8 and 7 days late, respectively.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

